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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,862	12/31/2003	Oleg Kiselev	VRT0058P1US	6313

60429 7590 09/27/2006

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EXAMINER	
RUTZ, JARED IAN	

ART UNIT	PAPER NUMBER
2187	

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/749,862	**Applicant(s)** KISELEV ET AL.	
	Examiner Jared I. Rutz	**Art Unit** 2187	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Applicant's Arguments, see page 8 lines 15-25, with respect to the double patenting rejection of claims 1, 5, 9, 13, 14, and 18 of the instant application as being unpatentable over claims 1, 9, and 12 of US patent 7,028,156 in view of Bearden et al. (US 2004/0205298) are not persuasive. The instant application and the 156 Patent are commonly owned. Bearden is cited to establish that claims 1, 5, 9, 13, 14, and 18 of the instant application are variations of claims 1, 9, and 12 of the 156 patent that would have been obvious to one of ordinary skill in the art as presented in the Office action of 8/15/2006.

Applicant's Arguments, see page 9 lines 4-10, with respect to the double patenting rejection of claims 1-6, 9-11, 13, and 18 of the instant application as being unpatentable over claims 1-4, 8, 14-17, and 23 of copending US patent application 10/742,129 in view of Bearden et al. (US 2004/0205298) are not persuasive. The instant application and the 129 application are commonly owned. Bearden is cited to establish that claims 1-6, 9-11, 13, and 18 of the instant application are variations of claims 1-4, 8, 14-17, and 23 of the 129 application that would have been obvious to one of ordinary skill in the art as presented in the Office action of 8/15/2006.

Applicant's arguments, see page 9 lines 11-22, with respect to the double patenting rejection of claims 1, 5, 6, 9, and 18 of the instant application as being unpatentable over claims 24, 25, 32, and 41 of copending US Patent application 11/242,216 (now US Patent 7,096,322) are not persuasive. Applicant states "double patenting, whether statutory or non-obviousness type, requires complete identity or obvious identity, respectively, of all limitations between the claims at issue. Limitations of claim 1 of the instant application do not have complete or obvious identity to corresponding limitations claim 24 of the '216 patent application. The same arguments can be made with respect to claims 9, and 18 of the instant application." The Examiner respectfully disagrees. All recited limitations of claims 1, 5, 6, 9, and 18 are recited in claims 24, 25, 32, and 41 of the 216 application. As Applicant could have filed all claims of the 216 application in the parent 10/610,604 application (now US Patent 7,028,156), only a one way determination of obviousness is required, see MPEP 804(II)(B)(1)(a).

JIR
9/19/06

Brian R. Peugh
Primary Examiner